

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Squad #10	CCRB Case #: 201701024	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/07/2017 9:20 AM	Location of Incident: West 110th Street and Manhattan Avenue	Precinct: 28	18 Mo. SOL 8/7/2018	EO SOL 8/7/2018	
Date/Time CV Reported Tue, 02/07/2017 3:49 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 02/07/2017 3:49 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Sam Russo	00000	904971	028 PCT
2. POF Karima Holmes	10993	936775	028 PCT
3. POF Ruth Mateo	20927	945239	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Sam Russo	Abuse: Lieutenant Sam Russo stopped § 87(2)(b) and § 87(2)(b)	
B.POF Karima Holmes	Abuse: Police Officer Karima Holmes stopped § 87(2)(b) and § 87(2)(b)	
C.POF Ruth Mateo	Abuse: Police Officer Ruth Mateo stopped § 87(2)(b) and § 87(2)(b)	
D.LT Sam Russo	Force: Lieutenant Sam Russo used physical force against § 87(2)(b)	

### Case Summary

On February 7, 2017, § 87(2)(b) filed the following complaint with the CCRB. On February 8, 2017, § 87(2)(b) filed a duplicate complaint on behalf of her son, § 87(2)(b) § 87(2)(b) which was reflected in CCRB case number 201701032 and incorporated into this case. On February 7, 2017, at approximately 9:20 a.m., § 87(2)(b) s son, § 87(2)(b) § 87(2)(b) and his girlfriend § 87(2)(b) were walking to school when they were stopped at the intersection of West 110<sup>th</sup> Street and Manhattan Avenue in Manhattan by Lt. Sam Russo, PO Karima Holmes and PO Ruth Mateo of the 28<sup>th</sup> Precinct (**Allegations A, B, and C**). § 87(2)(b) and § 87(2)(b) were asked to present identification. § 87(2)(b) stated that he did not have identification on him and expressed a belief that he was not required to provide identification. Lt. Russo exited the patrol vehicle, grabbed § 87(2)(b) placed him against the patrol vehicle, and then pushed him face-down onto the front passenger seat of the patrol vehicle (**Allegation D**). § 87(2)(b) provided her own and § 87(2)(b) s identification to PO Holmes. Truancy referral reports were filed and § 87(2)(b) and § 87(2)(b) were released. § 87(2)(b) was a witness to this incident and spoke to Lt. Russo afterwards.

The investigation obtained both a cell phone video recorded by § 87(2)(b) as well as security camera footage from a nearby building.

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation § 87(2)(b)
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)
- § 87(2)(b) s family has filed a notice of claim with the Office of the NYC Comptroller, alleging illegal arrest and excessive force, and claiming an undisclosed amount in compensation (**Board Review 2**).

### Civilian and Officer CCRB Histories

- This is the first and only complaint filed by § 87(2)(b) or § 87(2)(b) (**Board Review 3**).
- Lt. Russo has had 7 previous complaints involving 13 allegations made against him in his 23 year tenure at the NYPD. In CCRB case number 200103750, an allegation of refusal to provide name and shield number and an allegation of offensive language related to ethnicity were substantiated. Charges were recommended, and Lt. Russo pleaded guilty. He was penalized with the loss of 15 vacation days. In three previous CCRB complaints filed against him: 200300378, 200401549, and 201502136; allegations of physical force were made against him. In two of the cases, the allegations were exonerated. In one case, the allegation was unsubstantiated. In CCRB case number 201702755, an allegation of force is currently pleaded against Lt. Russo. That case is still under investigation (**Board Review 4**).

- PO Holmes has had five complaints involving five allegations made against her in her 12 year tenure in the NYPD. None of the allegations have been substantiated, and § 87(2)(g) (Board Review 5).
- This is the first and only complaint filed against PO Mateo in her 9 year tenure in the NYPD (Board Review 6).

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- Lt. Russo, PO Mateo and PO Holmes all acknowledged to being involved in this incident.

#### **Allegations not pleaded**

- Abuse of Authority – An allegation of refusal to provide shield number is not pleaded against Lt. Russo. Although § 87(2)(b) alleged that Lt. Russo responded to her request for his shield number by stating, “I’m not going to give you that.” NYPD Lieutenants do not have shield numbers. Further, § 87(2)(b) stated that Lt. Russo provided his name to her.

**Allegation A – Abuse of Authority: Lieutenant Sam Russo stopped § 87(2)(b) and § 87(2)(b)**

**Allegation B – Abuse of Authority: Police Officer Karima Holmes stopped § 87(2)(b) and § 87(2)(b)**

**Allegation C – Abuse of Authority: Police Officer Ruth Mateo stopped § 87(2)(b) and § 87(2)(b)**

It is not in dispute that Lt. Russo, PO Holmes and PO Mateo stopped § 87(2)(b) and § 87(2)(b) on suspicion of truancy. § 87(2)(b) and § 87(2)(b) stated that they were stopped at 9:20 a.m. PO Mateo was the youth enforcement officer and was familiar with the class hours of the schools in the 28<sup>th</sup> Precinct. She begins truancy enforcement at 9:00 a.m. Lt. Russo and PO Holmes did not conduct youth enforcement and were not familiar with the school hours. § 87(2)(b) and § 87(2)(b) were both § 87(2)(b) years of age on the incident date. § 87(2)(b) is 5’8” tall and was carrying a book bag at the time of the incident. § 87(2)(b) is 5’1” tall and was carrying a tote bag. § 87(2)(b) as well as all of the police officers stated that the two minors appeared to be of school age. The stop occurred at the intersection of West 110<sup>th</sup> Street and Manhattan Avenue. There is no school at that location.

According to A-101 (4) of the Regulations of the Chancellor of the NYC Department of Education. All students between the ages of 5 and 17 must attend school throughout the school year if no high school diploma has been granted (**Board Review 7**). Patrol Guide Procedure 215-07 defines a truant as a minor who is not in compliance with the attendance requirement of the New York City Department of Education Regulations, and directs officers that encounter truants to, “Take minor into custody and deliver to principal or designee of school attended, if known.” (**Board Review 8**) PD 377-111 advises officers that sufficient standard of proof to stop a truant exists when, “Observing a minor, who reasonably appears to be over the age of six and less than eighteen outside of school on a day of instruction...” (**Board Review 9**)

§ 87(2)(g)

**Allegation D – Force: Lieutenant Sam Russo used physical force against § 87(2)(b)**

It is undisputed that Lt. Russo grabbed § 87(2)(b) and pushed him against the side of the patrol vehicle. § 87(2)(b) and § 87(2)(b) were largely consistent with each other in their statements.

§ 87(2)(b) stated that he and § 87(2)(b) informed the officers that they were § 87(2)(b) and were on their way to school. § 87(2)(b) stated that he told PO Mateo he did not have identification on him. § 87(2)(b) also stated that he had been instructed in school that he did not have to provide identification to police officers. Lt. Russo exited the patrol vehicle leaving the front passenger door open, grabbed § 87(2)(b) by the right arm, and pushed him against the rear passenger side door of the patrol vehicle. § 87(2)(b)'s left cheek struck the rear passenger window. Lt. Russo then pulled his arms behind his back and pushed § 87(2)(b) face-down onto the front passenger seat of the patrol vehicle. § 87(2)(b) was bent over the front seat at the waist with his feet remaining on the ground. § 87(2)(b) did not recall whether Lt. Russo issued any orders or commands during the use of force. § 87(2)(b) and § 87(2)(b) both provided an account of the physical force consistent with § 87(2)(b). § 87(2)(b) stated that she did not hear anything that § 87(2)(b) or the officers said during the use of force, § 87(2)(b). § 87(2)(b) was taken to § 87(2)(b) by his mother after feeling pain in his right shoulder and right arm. Upon advice of counsel, § 87(2)(b) declined to provide medical documents to the CCRB.

Lt. Russo stated that he exited the vehicle when § 87(2)(b) began raising his voice and waving his arms about in an irate manner while refusing PO Mateo's request for information. Lt. Russo stated that he was concerned that § 87(2)(b) was reaching for a weapon. Lt. Russo stated that he believed § 87(2)(b) had a weapon because he could not see § 87(2)(b)'s hands. However, Lt. Russo was unable to articulate why he could not see § 87(2)(b)'s hands, nor could he state where he believed § 87(2)(b) was hiding a weapon. Lt. Russo stated that he grabbed § 87(2)(b) and pushed him towards the side of the patrol vehicle, but was not able to recall specifics of his actions until he was shown the security camera footage from the nearby building. Lt. Russo stated that he held § 87(2)(b) against the side of the vehicle, but did not recall specifically how he held § 87(2)(b). Lt. Russo initially denied that § 87(2)(b) entered the police vehicle at any time, but upon viewing the video, Lt. Russo stated that § 87(2)(b) fell inside the doorway of the open front passenger side door. Lt. Russo denied that he pushed § 87(2)(b). Lt. Russo stated that he kept § 87(2)(b) in that position until § 87(2)(b) stopped moving. Lt. Russo stated that he did not search § 87(2)(b) for weapons, and that he did nothing else to determine whether § 87(2)(b) had a weapon. Lt. Russo stated that he released § 87(2)(b) once PO Mateo obtained the information needed to determine whether § 87(2)(b) was a truant.

PO Mateo stated that § 87(2)(b) refused her request for information by stating, “I’m not doing that.” PO Mateo did not describe § 87(2)(b) speaking in a raised voice or making any movements with his hands. PO Mateo exited the patrol vehicle from the driver’s side after Lt. Russo exited the vehicle. By the time she walked around to the passenger side, she saw Lt. Russo holding § 87(2)(b) by the arm. Although the video was presented to her, PO Mateo stated that she did not see Lt. Russo push § 87(2)(b) against the patrol vehicle. PO Holmes stated that she placed the vehicle into park after Lt. Russo exited the vehicle and that by the time she exited the vehicle and walked around to the passenger side, Lt. Russo had already placed § 87(2)(b) against the side of the vehicle. PO Holmes stated she therefore, did not see what led up to § 87(2)(b) being placed against the vehicle. PO Holmes stated that upon seeing Lt. Russo holding § 87(2)(b) against the vehicle, both she and PO Mateo said to Lt. Russo, “Loo I got him.” PO Holmes stated that § 87(2)(b) was moved towards the front passenger seat, but she did not see whether § 87(2)(b) was pushed onto the front passenger seat. PO Holmes removed § 87(2)(b)’s book bag from his back because she believed it was possible that Lt. Russo was going to handcuff § 87(2)(b). However, she did not know Lt. Russo’s intentions. PO Holmes stated that she did not know what led Lt. Russo to place § 87(2)(b) against the patrol vehicle.

The security camera video from 321 West 110<sup>th</sup> Street provides an account of the incident in its entirety, but without any audio recording.



201701024\_20170302\_1125\_DM.mp4

The cell phone video provided by § 87(2)(b) recorded sound, but only captured a portion of the incident.



201701024\_20170306\_1530\_DM.mov

Together, the videos showed that contrary to Lt. Russo’s assertion, § 87(2)(b) was not flailing his arms or moving around in an aggressive or erratic manner. After the patrol vehicle pulled over in front of them, § 87(2)(b) and § 87(2)(b) both approached the police vehicle, presumably at the request of the police officers. Neither § 87(2)(b) nor § 87(2)(b) attempted to flee or walk away from the police officers. § 87(2)(b) appeared to keep his arms at his side and did not appear to make any gestures. Lt. Russo exited the patrol vehicle first, approached § 87(2)(b) and grabbed him by the arm, and his shoulder and pushed him against the rear passenger side door of the patrol vehicle. § 87(2)(b) did not appear to flail his arms as Lt. Russo did this. In both § 87(2)(b)’s cell phone video and the building security camera video, the open front passenger door of the patrol vehicle blocked the camera from a complete view. As seen more clearly in the cell phone video than the building security camera video, Lt. Russo pushed § 87(2)(b) onto the front passenger seat of the patrol vehicle by holding § 87(2)(b)’s right arm behind his back and pushing him downward on the upper back. § 87(2)(b) can be seen moving downward towards the seat, but once bent down, he is blocked from the view of the camera by the open front passenger door. His shoes are visible on the ground underneath the door. § 87(2)(b)

§ 87(2)(b) remained down behind the door for several seconds. § 87(2)(b) is then brought to his feet, and made to turn around and face PO Holmes. As could be heard in the cell phone video, PO Holmes then proceeded to lecture § 87(2)(b) about being a truant and cooperating with police.

Patrol Guide Procedure 221-01 (**Board Review 10**) states that the reasonableness of the use of force by a police officer is determined by the following factors:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(g)  
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 § 87(2)(g)  
 Lt. Russo also admitted that he later did not frisk, search or do anything to determine whether § 87(2)(b) was armed. Neither PO Holmes nor PO Mateo believed that § 87(2)(b) was armed and did not describe him behaving violently. It should also be noted that truancy is not a penal law violation and at that point in the incident it had not yet been determined whether § 87(2)(b) was a truant. Although § 87(2)(b) refused to cooperate with providing identification, he did not behave violently or attempt to flee. § 87(2)(g)

§ 87(2)(b) t. After § 87(2)(b) s initial refusal to provide identification, Lt. Russo did not take any further action before using force. § 87(2)(b) stated that he is 5'8" tall and weighs 144 pounds. Lt. Russo is a § 87(2)(b) § 87(2)(b), and has been a police officer for 23 years.

Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date